

Quebec City, Quebec

January 15, 2012

Judicial Compensation and Benefits Commission

99, Metcalfe

Ottawa, Ontario K1A 1E3

Dear Commissioners,

Firstly, I would like to thank the Quadrennial Judicial Compensation and Benefits Commission for this opportunity to express my opinions regarding this topic.

My opinions are mine personally and do not represent those of any interest or lobby group. None of my family members are lawyers, even less judges. My submission to the Commission are those of a "reasonable and informed citizen"; therefore, my submission is not based upon jurisprudence or a detailed analysis of applicable law. I do have to declare a bias, that is, I believe the judicial system in Canada to be costly, inefficient, and inaccessible to the majority of the middle class of our society.

I would like to comment of two questions being discussed by the Commission:

- a) Salary and independence;
- b) Salary and attraction

followed by my conclusion and recommendations.

A.SALARY AND INDEPONDANCE

In the submission provided by the Superior Courts Judges Association, there seems to be some implicit notion that a higher salary assures a better level of independence. This notion of "higher salary = higher independence" is completely false as any first-year university student in administration will explain using the theories of Abraham Maslow.

If we define independence as the assurance that a person will not be tempted with a bribe or blackmail, the same pre-occupation with independence is shown in background checks for DND or NATO security clearances. In the latter, the “red flags” are not associated with salary level, but with level of indebtedness and dependency towards alcohol, drugs, gambling, etc. Indebtedness is a function of life-style and not salary; fortunately, Judges have the added benefit of having to manage their budget throughout their studies and articling; so managing a budget with a much higher salary should not be a problem.

In summary, Judges need to be provided a basic salary with satisfies their basic needs. Independence is then more a question of character than of salary.

The approach that proposes to model the salary scale with a comparable level within the civil service (DM-3 or other) seems perfectly reasonable.

B. SALARY AND ATTRACTION

The question of attraction is important and some means of tracking the success rate of attracting top candidates and the reasons for refusal is important. Recognizing that the motives of accepting a position with the magistrate involve many considerations other than salary, the appropriate salary level remains nonetheless an important consideration.

However, comparing salary levels between public and private practice is severely flawed. There are significant differences with the nature of the work, the security of work and salary, the prestige, other perquisites and pension.

The net salary calculated for private practitioners should be compared to a company revenue rather than personal salary. The nature of the pension plan offered to federal judges represents a significant amount of money that a private lawyer would have to save in order to purchase a comparable plan (at first look, somewhere in the range of 4 to 5 million dollars). However, this component of judge’s remuneration doesn’t seem to warrant discussion in the Judges’ Association document.

C. CONCLUSION

The existing pay scale offered to Judges places them among the privileged of Canadian society. Their pay scale offers the basic salary to achieve independence (although there other factors influencing independence which should be closely monitored). Linking the pay scale to a comparable level with the civil service seems a reasonable and adequate mechanism to free the Judges from negotiating their salary with the Executive branch of Government. This comparison group should be decided on once and the question put to rest.

The pension plan offered to Judges is non-sustainable and should be revised immediately. As it stands, a Judge's pension benefits could cost the Crown more than his or her salary as a sitting Judge. All pension plans based on fixed benefits will eventually "hit a wall". These plans were conceived at a time when demographic growth, economic growth and life expectancy were significantly different from today.

The Judge's Pension Plan should be immediately changed to a fixed contribution plan. Judges have the salary levels to allow them to contribute to additional saving plans, be they an individual or a group RRSP.

The same fixed benefits pension plans within the Public Service will have to be reviewed, as taxation levels required to make up for pension plan deficits becomes increasingly unacceptable. Canada's federal Judge's have a unique position to show leadership in this important change by accepting now the change of their pension plan to a fixed contribution plan.

"Seulestdigne de son pouvoircelui qui le justifie jour après jour."

Sincerely,

Robert Michon